

## **2009 DRAFTING REQUEST**

### **Bill**

Received: **02/23/2010**

Received By: **rnelson2**

Wanted: **Today**

Companion to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Eric**

May Contact:

Drafter: **rnelson2**

Subject: **Probate - trusts and trustees**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

### **Pre Topic:**

No specific pre topic given

---

### **Topic:**

Wills or trusts related to repealed federal transfer tax

---

### **Instructions:**

See attached

---

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 02/25/2010						
/P1	rnelson2 02/25/2010	jdyer 03/12/2010 csicilia 03/15/2010	jfrantze 02/25/2010 rschluet 03/15/2010		lparisi 03/15/2010		
/1	rnelson2 03/23/2010	csicilia 03/29/2010	jfrantze 03/29/2010		sbasford 03/29/2010	sbasford 03/29/2010	

FE Sent For: **NONE**

**<END>**

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/P1	rnelson2 02/25/2010	jdyer 03/12/2010 csicilia 03/15/2010	jfrantze 02/25/2010 rschluet 03/15/2010	_____	lparisi 03/15/2010		
/1	rnelson2 03/23/2010	csicilia 03/29/2010	jfrantze 03/29/2010	_____	sbasford 03/29/2010		

FE Sent For:

**<END>**

# **2009 DRAFTING REQUEST**

## **Bill**

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/?	rnelson2 02/25/2010						
/P1	rnelson2 02/25/2010	jdyer 03/12/2010 csicilia 03/15/2010	jfrantze 02/25/2010 rschluet 03/15/2010		lparisi 03/15/2010		

FE Sent For:

1 ip 3/29/10

<END>

## 2009 DRAFTING REQUEST

### Bill

Received: 02/23/2010

Received By: rnelson2

Wanted: Today

Identical to LRB:

For: Lena Taylor (608) 266-5810

By/Representing: Eric

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Probate - trusts and trustees

Extra Copies:

Submit via email: YES

Requester's email: Sen.Taylor@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Wills or trusts related to repealed federal transfer tax




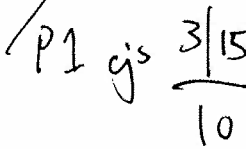
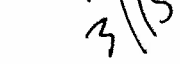
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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	rnelson2						
FE Sent For:							

<END>

## MEMORANDUM

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**TO:** RPPT Board -- Trust & Estate Practitioners  
**CC:** Cale Battles  
**FROM:** Mark A. Shiller  
**DATE:** February 5, 2010  
**RE:** Estate Tax Repeal Response

---

It was determined on our last teleconference regarding trusts & estates related legislative matters that a response to the potential implications of the repeal of the estate tax was prudent and not only in the interest of the Bar, but of the public generally. There is significant potential for uncertainty and ambiguity arising in the administration of Wills and Trusts which did not contemplate the potential absence of the estate tax. This is especially troublesome given that an estate tax in some form or another has been relevant to decedents' estates and trusts since 1916 – a total of 93 years!

At least 10 other states and the District of Columbia are considering or sponsoring legislation to provide greater certainty in the administration of Wills and Trusts whose dispositive provisions are premised in some manner on the presence of an estate tax. First to act was the State of Virginia. Their proposal was to essentially administer Wills and Trusts as if the 2009 estate tax law continued to apply to transfers in 2010. While this approach is elegant in its simplicity, it will produce results contrary to a testator or settlor's intent in many circumstances. Therefore, I suggest that a different approach is in order premised on the following assumptions:

- ☐ Most estate tax planning formulae are not chosen because they balance interests of beneficiaries of a credit shelter trust, on the one hand, and a surviving spouse, on the other. Rather, such formulae are incorporated into Wills and Trusts so that the total transfer taxation on a family as a whole is reduced.
- ☐ The beneficial interests of the credit shelter trust beneficiaries and a spouse are, however, more likely to be a factor in second marriage circumstances.
- ☐ The law should create certain presumptions based on the above, but allow for different application of the formulae under certain circumstances.

Based on the foregoing assumptions, I suggest the following language for a new statute addressing this significant issue:

CR: →  
854.30

**Application of Certain Wills or Trusts Referring to Repealed Federal Transfer Taxes.** (1) A will or trust of a decedent who dies after December 31, 2009 and before January 1, 2011, that contains a formula disposing of certain of the decedent's property which is determined by reference to exemptions, exclusions, deductions, or credits under the Federal estate tax, the Federal generation-skipping transfer tax, or both, shall be administered as follows:

(a) If the decedent is not survived by a spouse, the formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009, but the Applicable Exclusion Amount for decedent's estates shall be deemed to be unlimited and the Federal Generation-Skipping Transfer Tax exemption shall also be deemed to be unlimited.

(b) If the decedent is survived by a spouse, and also survived by issue who are also all issue of the surviving spouse and the decedent, the formula disposing a decedent's property shall be administered as follows:

1. If the surviving spouse is the sole beneficiary of each share of the property subject to disposition by such formula, a current income beneficiary of each trust funded in whole or in part by such formula, or both, the formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009, but the Applicable Exclusion Amount for decedent's estates shall be deemed to be unlimited and the Federal Generation-Skipping Transfer Tax exemption shall also be deemed to be unlimited.

2. If the surviving spouse is not a beneficiary of each share of the property subject to disposition by such formula or is not a beneficiary of each trust funded in whole or in part by such formula, the formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009.

(c) If the decedent is survived by a spouse, and also survived by one or more issue who are not all also issue of the surviving spouse, the formula disposing a decedent's property shall be administered as if the

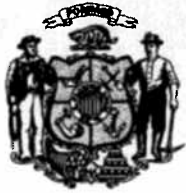


provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009.

(2) A personal representative of a decedent's estate, a trustee of a decedent's trust, a surviving spouse of a decedent or any beneficiary of a Will or trust to whom this section applies may petition the Court to apply a formula disposing of property under a Will or trust by reference to the Federal estate tax, the Federal generation-skipping transfer tax, or both, or the exemptions, exclusions, deductions or credits thereunder, in a manner different than as provided in subsection (1). The Court may consider the overall dispositive plan of the decedent, the tax implications of alternative dispositions, the decedent's intentions in establishing such a formula and such other matters as the Court deems appropriate. Such a proceeding must be commenced within one year of the decedent's death.

(3) This section shall not apply to Wills or trusts which are executed or amended after December 31, 2009 or that manifest an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable Federal estate tax or Federal generation-skipping transfer tax.

(4) In the event that the Federal estate tax, the Federal generation-skipping transfer tax, or both, are applicable to transfers of assets of a decedent who dies after December 31, 2009 but before January 1, 2011 due to the establishment or reinstatement of such tax or taxes, the provisions of this section shall not apply to such decedent's Will or trust and the subject formula shall be applied in a manner consistent with such tax or taxes.



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

✓

Gen

1

AN ACT ...; relating to: disposal of decedent's property. ✓

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version. ✓

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

2

SECTION 1. 854.30 of the statutes is created to read:

3

**854.30 Application of certain wills or trusts referring to repealed**

4

**federal transfer taxes.** (1) A will or trust of a decedent who dies after December

5

31, 2009, and before January 1, 2011, that contains a formula disposing of certain of

6

the decedent's property which is determined by reference to exemptions, exclusions,

7

deductions, or credits under the federal estate tax, the federal generation-skipping

8

transfer tax, or both, shall be administered as follows: ✓

9

(a) If the decedent is not survived by a spouse, the formula disposing of

10

decedent's property shall be administered as if the provisions of the federal estate tax

ne

## SECTION 1

1 tax and federal generation-skipping transfer tax were <sup>✓</sup>as in force on December 31,  
2 2009, <sup>✓</sup>but the applicable exclusion amount for decedent's estates shall be considered  
3 unlimited and the federal generation-skipping transfer tax exemption shall also be  
4 considered unlimited. <sup>✓</sup>

5 (b) If the decedent is survived by a spouse, <sup>✓</sup>and also survived by issue who are  
6 also all issue of the surviving spouse and the decedent, the formula disposing <sup>the</sup>  
7 decedent's property shall be administered as follows:

8 1. If the surviving spouse is the sole beneficiary of each share of the property  
9 subject to disposition by the formula, a current income beneficiary of each trust  
10 funded in whole or in part by the formula, <sup>↑ STEP: no change</sup> or both, the formula disposing <sup>the</sup> decedent's  
11 property shall be administered as if the provisions of the federal estate tax and  
12 federal generation-skipping transfer tax were just as they were in force on December 31, 2009, but the  
13 applicable exclusion amount for decedent's estates shall be considered unlimited and  
14 the federal generation-skipping transfer tax exemption shall also be considered  
15 unlimited.

16 2. If the surviving spouse is not a beneficiary of each share of the property  
17 subject to disposition by the formula or is not a beneficiary of each trust funded in  
18 whole or in part by the formula, the formula disposing <sup>the</sup> decedent's property shall be  
19 administered as if the provisions of the federal estate tax and federal  
20 generation-skipping transfer tax were just as they were in force on December 31, 2009.

21 <sup>9</sup> ~~AAAA~~ NOTE: Paragraph (b) does not seem to address what happens if  
22 (c) If the decedent is survived by a spouse, and also survived by one or more  
23 issue who are not all also issue of the surviving spouse, the formula disposing <sup>the</sup>  
24 decedent's property shall be administered as if the provisions of the federal estate tax  
and federal generation-skipping transfer tax were just as they were in force on December 31, 2009.

→ the surviving spouse is a beneficiary of some  
but not all shares of the property or the trusts. Is  
that a problem?

(2) A personal representative of a decedent's estate, a trustee of a decedent's trust, a surviving spouse of a decedent or any beneficiary of a will or trust to whom this section applies may petition the circuit court to apply a formula disposing of property under a will or trust by reference to the federal estate tax, the federal generation-skipping transfer tax, or both, or the exemptions, exclusions, deductions or credits thereunder, in a manner different than <sup>STET: no change</sup> ~~as~~ <sup>e that provided</sup> under sub. (1). The court may consider the overall dispositive plan of the decedent, the tax implications of alternative dispositions, the decedent's intentions in establishing the <sup>e</sup> formula and such other matters as the court considers appropriate. A proceeding under this subsection shall be commenced within one year of the decedent's death or be barred.

(3) This section <sup>✓</sup> does not apply to wills or trusts that are executed or amended after December 31, 2009 <sup>3</sup> or that manifest an intent that a contrary rule apply if the decedent dies on a date on which there is no <sup>3</sup> ~~then~~ applicable federal estate tax or federal generation-skipping transfer tax.

(4) In the event that the federal estate tax, the federal generation-skipping transfer tax, or both, are applicable to transfers of assets of a decedent who dies after December 31, 2009 <sup>3</sup> but before January 1, 2011 <sup>3</sup>, due to the establishment or reinstatement of ~~that tax~~ <sup>one or both of those taxes</sup>, the provisions of this section do not apply to the decedent's will or trust and the formula shall be applied in a manner consistent with ~~that tax~~ <sup>the applicable or taxes</sup>.

(END)

one or both  
of those  
taxes

or taxes

the  
applicable

d-note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4406/P1dn

RPN:/...jf

cjs

— Late —

Please review this draft carefully to ensure that it is consistent with your intent. I suggest you share the draft with persons who practice in this area to ensure that it does meet your intent.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4406/P1dn  
RPN:cjs:rs

March 15, 2010

Please review this draft carefully to ensure that it is consistent with your intent. I suggest you share the draft with persons who practice in this area to ensure that it does meet your intent.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)

**Nelson, Robert P.**

---

**From:** Peterson, Eric  
**Sent:** Friday, March 19, 2010 12:11 PM  
**To:** Nelson, Robert P.  
**Cc:** 'Cale Battles'  
**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Bob,

Sorry about not contacting you. Yes, please make these changes in the draft and then we can go to jacket.

Thanks!  
Eric

**Eric M. Peterson**

Chief of Staff -- Senator Lena C. Taylor  
608-266-5810 o, 608-267-2353 f

---

**From:** Cale Battles [mailto:cbattles@wisbar.org]  
**Sent:** Friday, March 19, 2010 12:07 PM  
**To:** Peterson, Eric  
**Cc:** Nelson, Robert P.  
**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Eric,

Please see the message from Bob Nelson below. We would like these changes incorporated into the draft. Once the changes are made then it is ready for introduction.

Cale

Cale Battles  
Government Relations Coordinator  
State Bar of Wisconsin  
[www.wisbar.org](http://www.wisbar.org)  
(608) 250-6077  
(800) 444-9404, ext. 6077  
(608) 695-5686 - cell phone

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**From:** Nelson, Robert P. [mailto:Robert.Nelson@legis.wisconsin.gov]  
**Sent:** Friday, March 19, 2010 11:54 AM  
**To:** Shiller, Mark; Cale Battles  
**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

I have not heard anything about this e-mail from Taylor's office. Did you share this language with them? Do

03/22/2010

they have any problems with it? Do you want me to redraft the bill?

Is it ready for introduction with these changes? If so, I would appreciate some background info that I could use when preparing the analysis.

Bob N

---

**From:** Shiller, Mark [mailto:MShiller@gklaw.com]

**Sent:** Monday, March 15, 2010 2:20 PM

**To:** Cale Battles

**Cc:** Nelson, Robert P.

**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Cale --

Thanks for passing this along. Robert did a nice job, and I note that he made a comment related to one of the sections of the proposed statute.

As I think you are aware, I had some discussions with Victor Schultz of the Bankers' Association, and we had some discussions regarding subparagraphs (a) and (b) of subd. (1). We simplified things, I think, quite a bit, and address Robert's question better. Here's the changes:

(a) The formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009, except that the Applicable Exclusion Amount under I.R.C. Sec. 2010(c) for decedent's estates shall be deemed to be unlimited and the Federal Generation-Skipping Transfer Tax exemption under I.R.C. Sec. 2631(c) shall also be deemed to be unlimited, if all of the following are true:

1. The decedent is survived by a spouse.
2. If the decedent is survived by issue, all issue of the decedent are also issue of the surviving spouse.
3. The surviving spouse is a current income beneficiary of each trust funded in whole or in part by such formula, or the sole beneficiary of any other property subject to disposition by such formula which does not pass in trust.

(b) In all other circumstances, the formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009.

I hope that's responsive, and isn't too hard to get into the revisions. I'm guessing there's one or two formatting changes -- but I wasn't quite sure whether to make them myself.

To keep things moving, I'm copying Robert on this e-mail.

Any questions, please let me know.

Thanks,

Mark

---

**From:** Cale Battles [mailto:cbattles@wisbar.org]

**Sent:** Monday, March 15, 2010 2:01 PM

**To:** Shiller, Mark

**Subject:** FW: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

03/22/2010



Mark,

Here is the estate tax draft. Please review to make sure it meets your intent.

Cale

Cale Battles  
Government Relations Coordinator  
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Save the date!

State Bar of Wisconsin Annual Convention & Legal Expo  
[www.wisbar.org/conventions](http://www.wisbar.org/conventions)

May 5 - 7, 2010  
Monona Terrace Convention Center  
Madison, WI

03/22/2010

**Nelson, Robert P.**

---

**From:** Cale Battles [cbattles@wisbar.org]

**Sent:** Monday, March 22, 2010 1:23 PM

**To:** Nelson, Robert P.; Shiller, Mark

**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Bob,

Here is an article that summarizes the reason behind the legislative draft. Mostly the draft has to do with formula clauses that are included in certain trusts or wills with the assumption that the estate tax would be in place. The clauses were used so that individuals wouldn't have rewrite their will or trust every year when the estate tax exemption would change. With no estate tax in 2010, the formula clauses might create some unintended consequences including the disinheriting of spouses, children or possibly charities.

Mark, anything else you would like to add about the language?

Cale

<http://www.wisbar.org/AM/Template.cfm?Section=News&Template=/CM/ContentDisplay.cfm&ContentID=90595>  
**One-year repeal of federal estate taxes creates ambiguity**

By Tom Solberg, Media Relations Coordinator, State Bar of Wisconsin

Feb. 18, 2010 – There is an old saying that nothing is certain but death and taxes – but now Congress has found a way to cloak both in a fog of uncertainty, at least for estate planning purposes.

The crux of the issue is the one-year repeal of the federal estate tax for calendar year 2010, which was created as part of the federal tax cuts enacted in 2001. When those tax cuts expire for deaths in 2011 and thereafter, the estate tax will be back on the books with a \$1 million per estate exemption and a top rate of 55% (compared to the \$3.5 million exemption and 45% top rate in effect for deaths in 2009).

While the practical problems associated with this sequence of events are obvious, given the gridlock in Washington it is far less clear if Congress will be able to come up with a solution this year – and even if Congress does act, it is unclear how such legislation may apply to deaths occurring between Jan. 1, 2010, and the bill's enactment.

This uncertainty poses major estate planning challenges for both attorneys and their clients. On the face of it, even a one-year reprieve from federal estate taxation would appear to benefit affected beneficiaries of individuals who die in 2010, but Atty. Mark Shiller, a member of the State Bar's Real Property, Probate and Trust Law (RPPT) Section, cautions that the unsettled nature of the law creates a "significant potential for uncertainty and ambiguity arising in the administration of wills and trusts which did not contemplate the potential absence of the estate tax. This is especially troublesome given that an estate tax in some form or another has been relevant to decedents' estates and trusts since 1916 – a total of 93 years!"

In certain circumstances, the consequences could include the unintended disinheritance of spouses and protracted litigation among family members.

Shiller notes that at least 10 other states and the District of Columbia are considering or have enacted legislation to provide greater certainty. "First to act was the state of Virginia. Their legislature is currently considering a proposal to essentially administer wills and trusts as if the 2009 estate tax law continued to apply to transfers in 2010."

While this approach is elegant in its simplicity, Shiller warns that "it will produce results contrary to a testator or settlor's intent in many circumstances." He proposes a different response based on the assumption that "most estate tax planning formulae are incorporated into wills and trusts so that the total transfer taxation on a family as a whole is reduced." He adds that the beneficial interests of the credit shelter trust beneficiaries and a spouse are more likely to be a factor in second marriage circumstances and that any state-level response "should create

03/23/2010

certain presumptions based on the above, but allow for different application of the formulae under certain circumstances."

Shiller and other members of the RPPT Section are consulting with other interested parties, including the State Bar's Elder Law Section and the Wisconsin Bankers Association, to develop a legislative proposal within that broad framework. He cautions, however, that because the Legislature is scheduled to conclude work on routine legislation no later than April, the outlook for a legislative solution at the state level is uncertain.

The RPPT Section is collaborating with the Elder Law Section and others to include a segment on the estate tax issue in the 23<sup>rd</sup> Annual Law and the Elderly CLE program on May 14. Interested members should watch WisBar for additional information about the CLE, as well as any updates regarding pertinent federal and/or state legislative developments

Cale Battles  
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State Bar of Wisconsin  
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**From:** Nelson, Robert P. [mailto:Robert.Nelson@legis.wisconsin.gov]  
**Sent:** Monday, March 22, 2010 9:47 AM  
**To:** Shiller, Mark; Cale Battles  
**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

I would appreciate having some background information that I can use to prepare an analysis so this bill can be prepared for introduction.

Thanks,

Bob N

---

**From:** Shiller, Mark [mailto:MShiller@gklaw.com]  
**Sent:** Monday, March 15, 2010 2:20 PM  
**To:** Cale Battles  
**Cc:** Nelson, Robert P.  
**Subject:** RE: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Cale --

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As I think you are aware, I had some discussions with Victor Schultz of the Bankers' Association, and we had some discussions regarding subparagraphs (a) and (b) of subd. (1). We simplified things, I think, quite a bit, and address Robert's question better. Here's the changes:

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03/23/2010

on December 31, 2009, except that the Applicable Exclusion Amount under I.R.C. Sec. 2010(c) for decedent's estates shall be deemed to be unlimited and the Federal Generation-Skipping Transfer Tax exemption under I.R.C. Sec. 2631(c) shall also be deemed to be unlimited; if all of the following are true:

1. The decedent is survived by a spouse.
  2. If the decedent is survived by issue, all issue of the decedent are also issue of the surviving spouse.
  3. The surviving spouse is a current income beneficiary of each trust funded in whole or in part by such formula, or the sole beneficiary of any other property subject to disposition by such formula which does not pass in trust.
- (b) In all other circumstances, the formula disposing a decedent's property shall be administered as if the provisions of the Federal estate tax and Federal generation-skipping transfer tax were as in force on December 31, 2009.

I hope that's responsive, and isn't too hard to get into the revisions. I'm guessing there's one or two formatting changes -- but I wasn't quite sure whether to make them myself.

To keep things moving, I'm copying Robert on this e-mail.

Any questions, please let me know.

Thanks,

Mark

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**From:** Cale Battles [mailto:cbattles@wisbar.org]  
**Sent:** Monday, March 15, 2010 2:01 PM  
**To:** Shiller, Mark  
**Subject:** FW: Draft review: LRB 09-4406/P1 Topic: Wills or trusts related to repealed federal transfer tax

Mark,

Here is the estate tax draft. Please review to make sure it meets your intent.

Cale

Cale Battles  
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3/23  
State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4406/P1

RPN:cjs:rs

Shays

MON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 Bill

Gen Cat

1 AN ACT ~~to create~~ 854.30 of the statutes; **relating to:** disposal of decedent's  
2 property.

*Analysis by the Legislative Reference Bureau*

ing and → This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 854.30 of the statutes is created to read:

4 **854.30 Application of certain wills or trusts referring to repealed**  
5 **federal transfer taxes.** (1) A will or trust of a decedent who dies after December  
6 31, 2009, and before January 1, 2011, that contains a formula disposing of certain of  
7 the decedent's property that is determined by reference to exemptions, exclusions,  
8 deductions, or credits under the federal estate tax, 26 USC 2001-2801, the federal  
9 generation-skipping transfer tax, 26 USC 2601-2664, or both, shall be administered  
10 as follows:

1 (a) If the decedent is not survived by a spouse, the formula disposing the  
2 decedent's property shall be administered as if the provisions of the federal estate tax  
3 and federal generation-skipping transfer tax were in force just as they were on  
4 December 31, 2009, but the applicable exclusion amount for decedent's estates shall  
5 be considered unlimited and the federal generation-skipping transfer tax exemption  
6 shall also be considered unlimited.

7 (b) If the decedent is survived by a spouse, and also survived by issue who are  
8 also all issue of the surviving spouse, the formula disposing the decedent's property  
9 shall be administered as follows:

10 1. If the surviving spouse is the sole beneficiary of each share of the property  
11 subject to disposition by the formula, a current income beneficiary of each trust  
12 funded in whole or in part by the formula, or both, the formula disposing decedent's  
13 property shall be administered as if the provisions of the federal estate tax and  
14 federal generation-skipping transfer tax were in force just as they were on December  
15 31, 2009, but the applicable exclusion amount for decedent's estates shall be  
16 considered unlimited and the federal generation-skipping transfer tax exemption  
17 shall also be considered unlimited.

18 2. If the surviving spouse is not a beneficiary of each share of the property  
19 subject to disposition by the formula or is not a beneficiary of each trust funded in  
20 whole or in part by the formula, the formula disposing the decedent's property shall  
21 be administered as if the provisions of the federal estate tax and federal  
22 generation-skipping transfer tax were in force just as they were on December 31,  
23 2009.

\*\*\*\*NOTE: Paragraph (b) does not seem to address what happens if the surviving spouse is a beneficiary of some, but not all, shares of the property or the trusts. Is that a problem?

1 (c) If the decedent is survived by a spouse, and also survived by one or more  
2 issue who are not all also issue of the surviving spouse, the formula disposing the  
3 decedent's property shall be administered as if the provisions of the federal estate tax  
4 and federal generation-skipping transfer tax were in force just as they were on  
5 December 31, 2009.

6 (2) A personal representative of a decedent's estate, a trustee of a decedent's  
7 trust, a surviving spouse of a decedent or any beneficiary of a will or trust to whom  
8 this section applies may petition the circuit court to apply a formula disposing of  
9 property under a will or trust by reference to the federal estate tax, the federal  
10 generation-skipping transfer tax, or both, or the exemptions, exclusions, deductions  
11 or credits ~~thereunder~~ *those taxes* in a manner different than that provided under sub. (1). The  
12 court may consider the overall dispositive plan of the decedent, the tax implications  
13 of alternative dispositions, the decedent's intentions in establishing the formula and  
14 such other matters as the court considers appropriate *when determining how to respond to the petition*. A proceeding under this  
15 subsection shall be commenced within one year of the decedent's death or be barred.

16 (3) This section does not apply to wills or trusts that are executed or amended  
17 after December 31, 2009, or that manifest an intent that a contrary rule apply if the  
18 decedent dies on a date on which there is no applicable federal estate tax or federal  
19 generation-skipping transfer tax.

20 (4) In the event that the federal estate tax, the federal generation-skipping  
21 transfer tax, or both, are applicable to transfers of assets of a decedent who dies after  
22 December 31, 2009, but before January 1, 2011, due to the establishment or  
23 reinstatement of one or both of those taxes, the provisions of this section do not apply

Ins.  
3-5



1 to the decedent's will or trust and the formula shall be applied in a manner consistent  
2 with the applicable tax or taxes.

3 (END)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4406/22ms  
RPN:cjs:rs

1 Ins anl:

The federal estate tax was repealed for calendar year 2010 only. This bill addresses the administration of wills and trusts of decedents who died in calendar year 2010 that were created in the expectation that the federal estate tax would continue in 2010.

Under the bill, the will or trust of an individual who dies in calendar year 2010 that disposes of certain of the decedents property by reference to the federal estate tax, the federal generation-skipping tax, or both, will be administered as if the provisions of the federal estate tax and federal generation-skipping transfer tax were in force just as they were on December 31, 2009. However, the bill provides exceptions from that treatment, allowing the applicable exclusion amount for decedent's estates and the federal generation-skipping transfer tax exemption to be considered unlimited, if all of the following circumstances apply:

1. The decedent is survived by a spouse.
2. If the decedent is survived by issue, all issue of the decedent are also issue of the surviving spouse.

3. The surviving spouse is a current income beneficiary of each trust funded in whole or in part by such formula, or the sole beneficiary of any other property subject to disposition by such formula which does not pass in trust.

Under the bill, a personal representative of the decedent's estate or trustee of the decedent's trust may petition the circuit court to allow the use of a formula for distributing the decedents property, other than that described above. The bill allows the court to consider the overall dispositive plan of the decedent, the tax implications of an alternative disposition, and the decedent's intentions, when determining how to respond to that petition.

3 Ins 3-5:

(a) The formula disposing a decedent's property shall be administered as if the provisions of the federal estate tax and federal generation-skipping transfer tax were in force just as they were on December 31, 2009, except that the applicable exclusion amount under 26 USC 2010 (c) for decedent's estates shall be considered unlimited and the federal generation-skipping transfer tax exemption under 26 USC 2631 (c) shall also be considered unlimited, if all of the following apply:

1. The decedent is survived by a spouse.

1           2. If the decedent is survived by issue, all issue of the decedent are also issue  
2 of the surviving spouse.

3           3. The surviving spouse is a current income beneficiary of each trust funded in  
4 whole or in part by such formula, or the sole beneficiary of any other property subject  
5 to disposition by such formula which does not pass in trust.

6           (b) ~~In all other circumstances~~, the formula for disposing a decedent's property  
7 shall be administered as if the provisions of the federal estate tax and federal  
8 generation-skipping transfer tax were in force just as they were on December 31,  
9 2009.

*any of*  
If the circumstances described  
in par. (a) 1, 2, 3, ~~and~~ not present,

*and*

*is*

**Basford, Sarah**

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**From:** Peterson, Eric  
**Sent:** Monday, March 29, 2010 1:24 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4406/1 Topic: Wills or trusts related to repealed federal transfer tax

Please Jacket LRB 09-4406/1 for the SENATE.